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August 29, 2012

VIA E-MAIL AND OVERNIGHT MAIL

Illinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276

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IEPA/CAS

Re: Violation Notice: Midwest Generation, LLC, Crawford Generating Station
Identification No.: 6280
Violation Notice No.: W-2012-00055

Dear Ms. Rhodes:

This letter is a supplemental response to the above-referenced June 11, 2012 Violation Notice ("VN") following the meeting between the Illinois Environmental Protection Agency ("Illinois EPA or the "Agency") and Midwest Generation, LLC ("MWG") on August 14, 2012.¹ MWG appreciated the opportunity to discuss the VNs and the underlying allegations with the Agency. The extensive participation at the August 14th meeting by Interim Director John Kim and Agency personnel was productive and helped to clarify the key issues. As a result, MWG believes it now has a better understanding of the Agency's views regarding resolution of this matter.

The August 14th meeting also helped MWG both to identify issues that warrant further attention and explanation in this supplemental response and to revise its proposed Compliance Commitment Agreement ("CCA") for the MWG Crawford Generation Station ("Crawford") for the Agency's consideration. Accordingly, this supplemental response does not repeat all of the information contained in MWG's July 27, 2012 response to the VN, but rather focuses on responding to the questions and concerns raised by the Agency during the meeting. It also includes a revised, proposed CCA that MWG submits should be acceptable to resolve the VN allegations.

¹ The August 14, 2012 meeting was held at the request of MWG, pursuant to Section 31(a)(4) of the Illinois Environmental Protection Act. 415 ILCS 5/31(a)(4).

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By submitting this supplemental response, MWG does not waive any of the original objections to the VNs raised in our July 27th response. Moreover, MWG does not, by submitting this supplemental response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. Supplemental Response to Alleged Violations in the VN

To answer the questions presented at the meeting and further explain how Basin 16 at Crawford operated at the facility, MWG has set forth below additional information concerning: (1) the use and function of Basin 16; (2) the absence of clear evidence that the groundwater exceedances are from coal ash; and (3) the decommissioning activities for Basin 16 and other areas at the Crawford Station.

A. The Condition of Basin 16

As stated in MWG's July 27, 2012 VN response, and discussed further during the August 14th meeting, the term "ash impoundment" as applied to the Crawford Station is a misnomer. Basin 16 is distinguishable from a typical ash pond both in the way it is constructed and how it has been used. Basin 16 is approximately 70 feet long and 50 feet wide. Its sides slope down to a depth of only approximately 5 feet from grade level. The basin is small and shallow. The purpose of Basin 16 is to collect any storm water from the hydrobin area. Basin 16 was not used for ash settling or as a storage pond. The hydrobins are aboveground tanks used to settle out bottom ash from the process water. The bottom ash removed by the hydrobins is loaded into a truck and disposed of offsite or sent for beneficial use. The bottom ash is not discharged to, or otherwise placed in, Basin 16. The storm water that enters Basin 16 contains only a minor amount ash. The basin, pump and its role in the facility's operations are a part of the Station's storm water management controls, and are managed pursuant to the terms of the Storm Water Pollution Prevention Plan (SWPPP). The entire system is included in the Station's NPDES permit.

Because of Basin 16's limited use for storm water management, only a small amount of ash temporarily accumulates in the basin. That ash is periodically removed, at which time MWG visually inspects the condition of the asphalt and the concrete in the adjacent pump pit. Not later than September 30, 2012, and likely earlier, the entire Crawford Station facility, including the hydrobin area and Basin 16, will cease operating as a coal-fired electrical generating station. As part of the Crawford decommissioning, Basin 16 will be cleaned and the ash collected will be removed from the facility. MWG submits that this decommissioning of Basin 16 should alleviate the need for any further corrective action in response to the VN.

B. Absence of Data Showing Basin 16 is Causing a Release

As stated in the original VN Response, the monitoring well results do not support the contention that Basin 16 is the source of the alleged groundwater impacts.² Boron, a parameter closely associated with leachate from coal ash, was not detected above the Class 1 groundwater standard in either monitoring wells MW-1 or MW-2 at the Station. MWG understood from the Agency at the August 14th meeting that Illinois EPA considers manganese and sulfate to be indicators of coal ash, even in the absence of elevated boron levels. MWG respectfully disagrees with that conclusion and maintains its position stated in our July 27th response, that the monitoring data does not provide an adequate scientific basis on which to conclude that the use of Basin 16 has caused the alleged violations.

C. Crawford Decommissioning

As stated above, the Crawford Station will cease all operations no later than September 30, 2012. As part of the Crawford Station decommissioning process, MWG is undertaking many measures, including removing unused materials at the facility, ceasing all process wastewater discharges, and discontinuing the usual process wastewater treatment operations. During the August 14th meeting, the Agency asked about MWG's plans for decommissioning areas of the Crawford Station in which ash or coal handling operations have occurred. MWG has provided below additional information on the decommissioning of these areas in a good faith effort to resolve this matter through a Compliance Commitment Agreement.

As part of the decommissioning, ash residuals in Basin 16 will be removed. As part of the decommissioning of the ash management area, MWG will empty the fly ash silos and the hydrobins. Ash also will be removed from the precipitators.

Because MWG will no longer be operating the Crawford Station, all process wastewater discharges will cease. The Station's wastewater treatment system will be shut down and decommissioned. As part of the decommissioning, the clarifiers will be emptied and sediment will be removed from the equalization basins. (The equalization basins are concrete-lined basins with concrete sidewalls.)

With regard to coal handling areas at Crawford Station, MWG has already removed the coal from the coal pile area and scraped coal fines from the area. MWG will cover the area with topsoil and seed it for a vegetative layer. During the recent coal pile removal activity, areas beneath the surface were uncovered and revealed the presence of a continuous clay layer beneath the former coal pile, which has served to provide a stable staging surface for the coal pile and to impede percolation of precipitation through the underlying materials. MWG also will remove coal from the former handling areas, including the bunkers, the breaker house, conveyors and the barge unloading area. Finally, MWG will dredge the coal pile runoff pond.

² MWG incorporates by reference all of its discussion and explanation of the groundwater monitoring results in the original VN response.

All of these decommissioning measures will be accomplished within 12 months of the date of this letter, likely much sooner.

II. Revised Compliance Commitment Agreement

Following the meeting with the Agency and in response to the comments and requests for additional information, MWG is revising its original Compliance Commitment Agreement ("CCA") submitted in its initial response to the VN. Because of MWG's desire to resolve this matter without the need for further litigation, it has significantly expanded its proposed CCA to include additional activities described herein as part of its binding commitment to the Agency. MWG believes its revised CCA should be an acceptable resolution to the VN issued to the Crawford station.

Further, as stated in the original VN response, there is no threat to human health presented by the alleged exceedances of the groundwater standards. There are no potable water wells within the 2,500 foot radius of the Site, and the City of Chicago has an ordinance prohibiting the potable use of groundwater within its city limits.³ Both the lack of potable water wells and the City of Chicago ordinance support the conclusion that the groundwater at Crawford does not pose a risk to human health.

The modified CCA terms are as follows:

- A. The Crawford Station will shut down no later than September 30, 2012. MWG will confirm to the Agency when the shutdown has occurred.
- B. MWG will cease operation of the hydrobins.
- C. Basin 16 will be rinsed and the rinsewater will be directed to the Basin 16 sump for discharge to the equalization basins. Basin 16 may continue to be used for stormwater management purposes.
- D. Ash will be removed from the Crawford Station fly ash silos, hydrobins and precipitators.
- E. The coal pile has been removed and coal fines scraped from the area. The coal pile area will be covered with topsoil and seeded.
- F. The coal pile runoff pond will be dredged.
- G. The wastewater treatment system equalization basins will be drained and sediment removed with a front end loader.

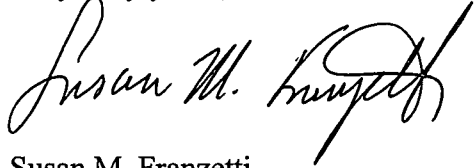
³ Chic. Muni. Code: 11-8-390. The City of Chicago's ordinance is expressly referenced in the Memorandum of Understanding between the City of Chicago and Illinois EPA included as justification in support of "No Further Remediation" determinations.

- H. Pending modification of the existing NPDES permit, or until a new NPDES stormwater permit is issued, to reflect the changed conditions at the Crawford Station, the wastewater treatment system will continue to operate, either in its existing condition or as modified to address the lack of process wastewater discharges and the ongoing discharge of stormwater from the Crawford Station.
- I. The above-described decommissioning activities will be completed within 12 months of the date of this letter.

A draft CCA is enclosed that contains the above-described actions in paragraph 5(a) through (i).

This letter constitutes our supplemental response to, and modified CCA for, the Violation Notice W-2012-00055. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We believe that this supplemental response is responsive to all of the Agency's comments and concerns expressed in our meeting, and represents an appropriate resolution to the VN. Should you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Susan M. Franzetti", with a stylized flourish at the end.

Susan M. Franzetti
Counsel for Midwest Generation, LLC

cc: Maria L. Race, Midwest Generation, LLC

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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AUG 29 2012

IEPA/CAS

IN THE MATTER OF:

Midwest Generation, LLC
Crawford Generating Station
Chicago, Cook County, Illinois
IEPA ID #170000041238

ILLINOIS EPA VN W-2012-00055
BUREAU OF WATER

COMPLIANCE COMMITMENT AGREEMENT

I. Jurisdiction

1. This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protection Agency ("Illinois EPA") and Midwest Generation, LLC, Crawford Generating Station ("Respondent") (collectively, the "Parties") under the authority vested in the Illinois EPA pursuant to Section 31(a)(7)(i) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(7)(i).

II. Allegation of Violations

2. Respondent owns and operates a coal fired electrical generating station at 3501 South Pulaski Road in Chicago, Cook County, IL.
3. Pursuant to Violation Notice ("VN") W-2012-00055, issued on June 11, 2012, the Illinois EPA contends that Respondent has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Regulations:
 - a) Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12
 - b) 35 Ill. Adm. Code 620.115, 620.301, 620.401, 620.405, and 620.410

III. Compliance Activities

4. On July 27, 2012, the Illinois EPA received Respondent's response to VN W-2012-00055, which included proposed terms for a CCA. On August 14, 2011, the Parties met at the Illinois EPA offices to discuss the violation notice and July 27th response. On August 29, 2012, the Illinois EPA received Respondent's supplemental reply to the VN in response to Illinois EPA's comments at the meeting. The Illinois EPA has reviewed Respondent's proposed CCA terms, as well as considered whether any additional terms

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and conditions are necessary to attain compliance with the alleged violations cited in the VN.

5. Respondent agrees to undertake and complete the following actions, which the Illinois EPA has determined are necessary to attain compliance with the allegations contained in VN W-2012-00055:
- a) The Crawford Station will shut down no later than September 30, 2012. MWG will confirm to the Agency when the shutdown has occurred.
 - b) MWG will cease operation of the hydrobins.
 - c) Basin 16 will be rinsed and the rinsewater will be directed to the Basin 16 sump for discharge to the equalization basins. Basin 16 may continue to be used for stormwater management purposes.
 - d) Ash will be removed from the Crawford Station fly ash silos, hydrobins and precipitators.
 - e) The coal pile has been removed and coal fines scraped from the area. The coal pile area will be covered with topsoil and seeded.
 - f) The coal pile runoff pond will be dredged.
 - g) The wastewater treatment system equalization basins will be drained and sediment removed with a front end loader.
 - h) Pending modification of the existing NPDES permit, or until a new NPDES stormwater permit is issued, to reflect the changed conditions at the Crawford Station, the wastewater treatment system will continue to operate, either in its existing condition or as modified to address the lack of process wastewater discharges and the ongoing discharge of stormwater from the Crawford Station.
 - i) The above-described decommissioning activities will be completed within 12 months of the date of this letter.

IV. Terms and Conditions

6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois EPA shall not refer the alleged violations that are the subject of this CCA, as described in Section II above, to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violations occurred. Successful completion of this CCA or an amended CCA shall be a factor to be weighed, in favor of the Respondent, by the Office of the Illinois Attorney General in determining whether to file a complaint on its own motion for the violations cited in VN W-2012-00055.

7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00055. The Illinois EPA reserves, and this CCA is without prejudice to, all rights of the Illinois EPA against Respondent with respect to noncompliance with any term of this CCA, as well as to all other matters. Nothing in this CCA is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Illinois EPA may have against Respondent, or any other person as defined by Section 3.315 of the Act, 415 ILCS 5/3.315. This CCA in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations.
8. Respondent represents that it has entered into this CCA for the purpose of settling and compromising the alleged violations in VN W-2012-00055. By entering into this CCA and complying with its terms, Respondent does not admit the allegations of violation within VN W-2012-00055 and this CCA shall not be interpreted as including such admission.
9. Pursuant to Section 42(k) of the Act, 415 ILCS 5/42(k), in addition to any other remedy or penalty that may apply, whether civil or criminal, Respondent shall be liable for an additional civil penalty of \$2,000 for violation of any of the terms or conditions of this CCA.
10. This CCA shall apply to and be binding upon the Illinois EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of Respondent's facility.
11. In any action by the Illinois EPA to enforce the terms of this CCA, Respondent consents to and agrees not to contest the authority or jurisdiction of the Illinois EPA to enter into or enforce this CCA, and agrees not to contest the validity of this CCA or its terms and conditions.
12. This CCA shall only become effective:
 - a) If, within 30 days of receipt, Respondent executes this CCA and submits it, via certified mail, to Andrea Rhodes, CAS, CAS #19, Illinois EPA, Division of Public Water Supplies, P.O. Box 19276, Springfield, IL 62794-9276. If Respondent fails to execute and submit this CCA within 30 days of receipt, via certified mail, this CCA shall be deemed rejected by operation of law; and
 - b) Upon execution by all Parties.
13. Pursuant to Section 31(a)(7.5) of the Act, 415 ILCS 5/31(a)(7.5), this CCA shall not be amended or modified prior to execution by the Parties. Any amendment or modification to this CCA by Respondent prior to execution by all Parties shall be considered a rejection of the CCA by operation of law. This CCA may only be amended subsequent to its effective date, in writing, and by mutual agreement between the Illinois EPA and

Respondent's signatory to this CCA, Respondent's legal representative, or Respondent's agent.

AGREED:

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

BY: _____
Mike Crumly
Manager, Compliance Assurance Section
Division of Public Water Supplies
Bureau of Water

DATE: _____

FOR RESPONDENT:

BY: _____
Susan M. Franzetti
Counsel for Midwest Generation, LLC

DATE: _____